IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9326 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HEMANTKUMAR UMIYASHANKAR BHATT

Versus

DISTRICT PRIMARY EDUCATION OFFICER

Appearance:

None present for Petitioner

MS SEJAL K MANDAVIA for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 17/10/2000

ORAL JUDGEMENT

#. Heard learned counsel for the respondent, perused the Special Civil Application, Annexure-C, the application for the restoration of the appeal and impugned order.

#. The Appeal No.436/93 filed by the petitioner before the Gujarat Civil Services Tribunal, Gandhinagar was came

to be dismissed for non-prosecution. In the appeal the petitioner has challenged the order of the respondent under which his services were terminated. The petitioner prayed for restoration of the appeal and as there was delay in filing the application for restoration, prayer has also been made for condonation thereof.

#. It is no more res integra that the court should be liberal in condoning the delay which has occurred in filing of the appeal. In catena of decisions the apex court held that where the litigant has good case on merits delay may be condoned. After going through the order passed by the learned Tribunal I am of the opinion that it has not taken into consideration the legal aspect and on technicalities the matter has been decided. The petitioner has made out a case for condonation of delay. Otherwise also, the respondents are not very serious to oppose this Special Civil Application which is clearly born out from the fact that the reply to the Special Civil Application has not been filed. The matter does not end here. On the day on which this application was heard by the learned Tribunal nobody was present on behalf of the respondent. When the respondents were not opposing this application the Tribunal should have taken the liberal view in the matter rather than to dismiss the same taking it to be a case of negligence of the petitioner, it should have been allowed. If we go by the judgment of the Tribunal it has considered the language used by the petitioner in some of the letters objectionable. Even if it is correct it is difficult to appreciate the approach of the Tribunal in the matter. The petitioner could have been reprimanded for this rather than to dismiss the application.

In the result, the Special Civil Application succeeds and the same is allowed and the order dated 27.4.2000 rejecting the Restoration Application No.1 of 2000 is quashed and set aside and the appeal is restored to its original number. This appeal is of the year 1993 and the Tribunal is directed to decide the same on merits within a period of six months from the date of the receipt of the writ of this order. Rule is made absolute accordingly. In the facts of this case the petitioner is directed to pay Rs.1,000/= towards costs of this Special Civil Application to the Respondent.

(S.K.Keshote, J.)

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